

by one side shifted the burden of proof on to the other side and I do not think it is correct to say that they required that this third item of proof must always be given. So in the view I take of that case, the findings of fact recorded by the learned Judge of the Court of appeal below are sufficient to show that the plaintiff is entitled to say that the family of Fakir Singh was governed by the school of Mitakshara law, for he has given the necessary proof of origin and practice. The result is that this second argument also fails.

The appeal is accordingly dismissed with costs.

SUHWARDY J. I agree.

S. M.

*Appeal dismissed.*

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 RAMESH  
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 BUKSE.  
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 J.

## REFERENCE UNDER COURT FEES ACT.

*Before Mookerjee J.*

SACHHIDANANDA THAKUR

v.

MAHES CHANDRA DAS.\*

1923  
 May 9.

*Court Fee—Bengal Tenancy Act (VIII of 1885), s. 105, cl. 3—Appeal from decision under s. 105.*

Where a court fee of annas eight only was paid by four tenants, who were tenants of one tenancy, in an appeal from a decision under s. 105 of the Bengal Tenancy Act :

*Held*, that the court fee paid was sufficient.

A stamp of annas eight is to be levied in respect of each tenancy, and not in respect of each tenant who may be one of a group of tenants holding a particular tenancy.

*Upadhya Thakur v. Persidh Singh* (1) referred to.

\* Reference under section 5 of the Court Fees Act, 1870, in the matter of S. A. File No. 2540 of 1922.

(1) (1896) I. L. R. 23 Calc. 723.

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THIS was a reference made by the Registrar of the High Court, Appellate Side, under section 5 of the Court Fees Act (VII of 1870) owing to a dispute as to the amount of court fee payable in regard to second appeal file No. 2540 of 1922; this appeal was preferred by four tenants from a decision under section 105 of the Bengal Tenancy Act on paying a court fee of annas eight only for the memorandum of appeal; the stamp reporter reported that the court fee was insufficient by rupee one and annas eight as annas eight should be paid for each tenant joining in the appeal; the vakil for the appellants contended that annas eight should be paid for each distinct tenancy and not for each tenant, and the court fee paid was therefore sufficient; the Registrar made the following reference:

"In this case, the stamp reporter reports that the court fee is insufficient by Re. 1-8. The appeal arises out of a proceeding under section 105 of the Bengal Tenancy Act. Under section 105(3) of that Act, every application under sub-section (1) or sub-section (2) shall, notwithstanding anything contained in the Court Fees Act, 1870, bear such stamp as the Government of India may, from time to time, prescribe by notification in the Gazette of India. It appears that in the notification No. 2254(f) published in the Gazette of India, dated the 10th August 1918, Pt. I, p. 1253, which superseded a previous notification No. 322 S. R., dated the 19th January 1899, it was provided that a stamp of annas 8 should be paid for each tenant making, joining or joined in the application. As regards the application in question, four tenants have been joined. The vakil for the appellant submits that these four tenants are tenants of one tenancy. Whether this be so or not, it seems to me that inasmuch as the rule framed by Government requires a stamp of annas 8 for each tenant, it is still necessary, on a literal interpretation of the rule framed by Government for the vakil to put in deficit court fee of Re. 1-8. As, however, this is a matter of general importance, I submit the case to the Hon'ble the Chief Justice under section 5 of the Court Fees Act."

The matter was referred to Mookerjee J. for decision.

*Babu Atul Chandra Gupta, for the appellant.*

*Babu Dwarka Nath Chakravarti* and *Babu Surendra Nath Guha*, for the Secretary of State.

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MOOKERJEE J. The question which has been referred for decision under section 5 of the Court Fees Act, 1870, relates to the true construction of a rule framed by the Governor-General in Council with reference to section 105, sub-section (3) of the Bengal Tenancy Act, 1885. The rule directs that an application made under the section for a settlement of rent, during the preparation of a record-of-rights, in the Presidency of Bengal under Chapter X of the Bengal Tenancy Act, shall bear a stamp of eight annas, for each tenant making or joining or joined in the application. The stamp reporter has held that if the application relates to a single tenancy, which is held by a number of joint tenants, a stamp of eight annas must be levied in respect of each of such joint tenants. This novel interpretation of a rule which has been in existence for a quarter of a century is, in my opinion, clearly erroneous.

The rule in question must be read with paragraph f3, clause (4) of the rules framed by the Governor-General in Council on the 7th December 1914. That rule is in these terms :

“With the consent of the Revenue officer, any  
“number of tenants occupying land under the same  
“landlord in the same village, may make a  
“joint application for the settlement of rent, or  
“may be joined as defendants in the same pro-  
“ceedings on a similar application by the land-  
“lord, provided that, if at any time it appears to  
“the Revenue officer that the question between  
“any two of the parties, of whom one is so joined  
“with others, cannot conveniently be so jointly tried,  
“he may order a separate trial to be held of that

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“question, or he may pass such orders. in accordance  
“with the Code of Civil Procedure for the joint or  
“separate disposal of the application. as he may  
“think fit.”

This rule leaves no room for controversy that the case contemplated is that of joinder of matters relating to distinct tenancies in the same application; otherwise no special permission would have been necessary, because if the application relates to one tenancy, which is held by a number of joint tenants, all the joint tenants would be necessary parties to the application. The history of this matter is set out in the judgment of a Full Bench of this Court in the case of *Upadhya Thakur v. Persidh Singh* (1). The rule for the levying of stamp duty which I have previously mentioned was framed with a view to modify the effect of the Full Bench decision. In my opinion the only construction which can be legitimately put upon the rule is that a stamp of eight annas is to be levied in respect of *each tenancy*, not in respect of each tenant who may be one of a group of tenants holding a particular tenancy. The conclusion follows that adequate court fee has been paid on the memorandum of appeal which must be registered accordingly.

(1) (1896) L. L. R. 23 Calc. 723.

A. S. M. A.